

STATE OF MAINE
CUMBERLAND, ss.

BUSINESS & COUNSUMER DOCKET
DOCKET NO. CV-2018-26

JOEL D. DAVIS,)
)
 Plaintiff)
)
 v.)
)
 WILLIAM E. LOVELY and A.B.J.)
 GENERAL CONTRACTOR, INC.,)
)
 Defendants)
)
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)
)
 WILLIAM E. LOVELY and A.B.J.)
 GENERAL CONTRACTOR, INC.,)
)
 Counterclaim Plaintiff)
)
 v.)
)
 JOEL D. DAVIS,)
)
 Counterclaim Defendant)

ORDER DENYING PLAINTIFF'S
MOTION FOR PRE-JUDGMENT
ATTACHMENT AND TRUSTEE
PROCESS

Plaintiff filed a Complaint on December 3, 2018 against Defendants alleging Breach of Contract, Breach of Duties as a Member of a Limited Liability Company, Breach of the Covenant of Good Faith and Fair Dealing, Unjust Enrichment, Interference with Advantageous Business Opportunity, Intentional Misrepresentation, Negligent Misrepresentation and Fraud. Plaintiff has filed a Motion for Pre-Judgment Attachment and Trustee Process pursuant to M.R. Civ. P. 4A in connection with the Complaint, and that Motion is now pending before the Court. The Court has carefully reviewed Plaintiff's Motion and, for the reasons discussed below, the Court denies the Motion.

An attachment pursuant to M.R. Civ. P. 4A “may be ordered only if the court finds that it is ‘more likely than not that the plaintiff will recover judgment in an amount equal or greater than the aggregate sum of the attachment.’” *Trans. Coastal Corp. v. Curtis*, 622 A.2d 1186, 1188 (Me. 1993) (quoting M.R. Civ. P. 4A(c)). The movant has the burden of making this showing, and must do so by providing affidavits that “set forth specific factual allegations, not merely conclusory statements, sufficient to warrant the required findings.” M.R. Civ. P.4A(c), (i); *Connor v. Stitham*, 485 A.2d 659, 660 (Me. 1984). “The arguments of counsel cannot substitute for the required sworn statements of relevant facts.” *Wilson v. DelPapa*, 634 A.2d 1252, 1254 (Me. 1993).

The Motion before the Court fails to meet the requirements set forth above and, therefore, must be denied. The Motion itself is abbreviated, lacks any legal argument, and fails to explain how or why Plaintiff satisfies his burden of proof. The affidavits presented by Plaintiff either merely refer to the Complaint, or contain short statements of facts that are not tied to any specific argument. The affidavit filed by Plaintiff’s attorney is not the kind of affidavit that can be used to support a Motion for Attachment. The Court is therefore unable to evaluate whether there is a reasonable likelihood Plaintiff will succeed on the merits of the claims against the Defendants. Because Plaintiff has failed to meet his burden, the Court cannot grant the Motion.

For all the foregoing reasons, Plaintiff’s Motion for Pre-Judgment Attachment and Trustee Process is denied.

Pursuant to M.R. Civ. P. 79(a), the Clerk is instructed to incorporate this Order by reference on the docket for this case.

So Ordered.

Dated: January 29, 2019

_____/s
Michael A. Duddy
Judge, Business and Consumer Docket